

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

GENERAL COUNSEL
OF COPYRIGHT

OCT 28 1998

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In the Matter of

DIGITAL PHONORECORD DELIVERY
RATE ADJUSTMENT PROCEEDING

Docket No. 96-4
CARP DPRA

REPLY COMMENTS OF NMPA, SGA AND
RIAA REGARDING ADOPTION OF RATES FOR
GENERAL DIGITAL PHONORECORD DELIVERIES

As the Copyright Office requested in its Order of October 16, 1998, National Music Publishers' Association, Inc. ("NMPA"), the Songwriters Guild of America ("SGA"), and the Recording Industry Association of America, Inc. ("RIAA") (collectively the "Petitioners") submit these Reply Comments in response to the Comments of the Coalition of Internet Webcasters (the "Webcasters") to the Memorandum of NMPA, SGA and RIAA (the "Webcaster Comments") and the Comments of BMI, ASCAP and SESAC (the "Performing Rights Organizations"; such comments hereinafter the "Performing Rights Comments").

The Webcaster Comments respond to Petitioners' recommendations made in the October 14, 1998 Memorandum of NMPA, SGA and RIAA Regarding the Adoption of Rates for General Digital Phonorecord Deliveries ("October 14 Joint Memorandum"). The Webcasters have no objection to Petitioners' request for adoption of the general DPD rate or to the schedule for future proceedings (subject to the Webcasters' suggestion, discussed below, with respect to the schedule for setting incidental DPD rates).

The Webcasters also do not object to the Copyright Office's severing and deferring the issue of rates for incidental DPDs, with two suggestions: first, that a party should be able to petition the Copyright Office to set a rate for incidental DPDs in the interim period prior to the next adjustment of rates; and second, that the Copyright Office defer promulgation of any rate for incidental DPDs until completion of the study required by Congress under Section 104 of the Digital Millennium Copyright Act of 1998 (the "Act"; the study hereinafter the "Millennium Act Report"), subject to the right to petition for a rate in the interim period.

With regard to the first suggestion, Petitioners agree with the Webcasters -- any person with standing under Sections 115(c)(3)(D) and 803(a)(1) should be allowed to petition to set an interim rate for incidental DPDs.

With regard to the Webcasters' second suggestion, however, Petitioners believe that there is no reason to delay the rate setting process for incidental DPDs pending the completion of the Millennium Act Report. Section 104 of the Act requires the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce to study, and report to Congress within 24 months, on the effects of Title I of the Act (the anticircumvention and copyright management information provisions), electronic commerce and emerging technology on "the operation of Sections 109 and 117 of the Copyright Act." Section 109 of the Copyright Act codifies the first sale doctrine and Section 117 relates to copies made by the "owner of a copy of a computer program." Section 104 of the Act makes no reference to Section 115 of the Copyright Act and does not call for any study of DPDs, streaming audio or "temporary copies" of sound recordings of musical works. Nothing in the Act compels or warrants any deferral or modification of the schedule for adjusting the rates for incidental DPDs.

Turning to the Performing Rights Comments, the Performing Rights Organizations suggest language for a new 37 C.F.R. § 255.8 that paraphrases 17

U.S.C. § 115(c)(3)(K), but indicate that they "have no objection to a more precise . . . tracking of the statutory language" Performing Rights Comments at 3 n.1. Petitioners do not believe that the proposed new 37 C.F.R. § 255.8 is necessary, but would have no objection to a savings clause that precisely tracked the relevant part of 17 U.S.C. § 115(c)(3)(K). Accordingly, Petitioners suggest that any new 37 C.F.R. § 255.8 read as follows:

Nothing in Part 255 annuls or limits the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under 17 U.S.C. §§ 106(4) and 106(6).

Dated: October 28, 1998

Respectfully Submitted,

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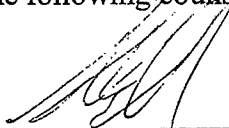
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CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of October, 1998, served the foregoing Reply Comments of NMPA, SGA and RIAA Regarding Adoption of Rates for General Digital Phonorecord Deliveries by mail to the following counsel.



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